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Attorneys for Defendant
NOVO NORDISK INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE INCRETIN-BASED
THERAPIES PRODUCTS LIABILITY
LITIGATION

As to All Related and Member Cases

Case No. 13-md-2452-AJB-MDD

**DEFENDANTS' JOINT
OPPOSITION AND
STATEMENT OF POSITION IN
RESPONSE TO PLAINTIFFS'
MOTION FOR
CLARIFICATION AND
MODIFICATION OF
DISCOVERY DISPUTE
PROTOCOL**

Judge: Hon. Anthony J. Battaglia
Magistrate: Hon. Mitchell D. Dembin

1 Defendants Eli Lilly and Company, Amylin Pharmaceuticals, LLC, Merck
2 Sharp & Dohme Corp., and Novo Nordisk Inc. respectfully submit the following
3 joint opposition and statement of position in response to Plaintiffs' August 22, 2014
4 motion seeking to clarify and modify the Court's discovery dispute protocol ("the
5 Protocol") issued on August 14.

6 To be clear, Defendants accept the terms of the Protocol as issued.
7 Defendants defer to the Court's judgment as to the scope, nature and timing of
8 information it needs to resolve discovery disputes. Defendants endorse
9 wholeheartedly the stated goal of the Court to resolve discovery disputes quickly
10 and efficiently.

11 Plaintiffs' motion raises three points, addressed below.

12 First, Plaintiffs suggest that the "top ten list" of discovery disputes they
13 raised with the Court in chambers on August 14 was intended to be an illustrative,
14 but not exhaustive, list. Defendants agree that Plaintiffs have raised various issues
15 over time. Defendants would request, however, that any such "other current"
16 disputes be defined by Plaintiffs so that they can be added to the list of current
17 disputes to be discussed at the September 16 status conference under paragraph
18 I.1.a. of the Protocol.

19 Second, Plaintiffs suggest that the time limits in the Protocol should not
20 require Plaintiffs to review productions of documents and raise any issues relating
21 to the documents produced therein within seven days. Defendants agree.

22 Third, Plaintiffs argue that the Protocol should be modified such that they
23 should be permitted to file reply briefs in support of their discovery motions.
24 Defendants oppose this modification and agree with the Court that reply briefs are
25 not necessary. The robust "meet and confer" process contemplated by the Protocol
26 should ensure that the positions of the parties are clear before disputes are brought
27 to the Court, obviating the need for reply briefs. For example, the "'burden'
28 arguments" Plaintiffs reference in their memorandum in support of their motion

1 will be addressed in the fulsome meet and confer process the Court envisions. The
2 Protocol appropriately prevents unnecessary delay and requires the moving party to
3 set forth its position in full in the first instance.

4 Defendants do request clarification as to one term of the Protocol. Paragraph
5 II.2. provides the responding party five days to file opposition to a discovery
6 motion. Defendants wish to clarify that the Court intended to provide five business
7 days, as opposed to five calendar days. Such a result would be consistent with
8 Magistrate Judge Dembin's previously-applicable procedures and allows for
9 sufficient time for all four defendants to confer on a joint motion. (See Chambers
10 Rules of the Honorable Mitchell D. Dembin, at 5.)

11
12 Respectfully submitted:

13 Dated: August 26, 2014

LOREN H. BROWN
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DLA PIPER LLP

16
17 By: /s/ Christopher M. Young

18 Attorneys for Defendant
Novo Nordisk Inc.

19 Dated: August 26, 2014

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21 By: /s/ Nina M. Gussack

22 Attorneys for Defendant
Eli Lilly and Company, a corporation

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24 Dated: August 26, 2014

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Dated: August 26, 2014

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By: /s/ Richard B. Goetz

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Dated: August 26, 2014

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SIGNATURE CERTIFICATION

Pursuant to Section 2.f.4 of the Court’s CM/ECF Administrative Policies, I hereby certify that authorization for the filing of this document has been obtained from each of the other signatories shown above and that all signatories have authorized placement of their electronic signature on this document.

/s/ Christopher M. Young
Christopher M. Young

1 **CERTIFICATE OF SERVICE**

2 I, Erin Domingo, certify:

3 I am a resident of the state of California, over the age of eighteen years, and
4 not a party to the within action. My business address is DLA Piper LLP (US), 401
5 B Street, Suite 1700, San Diego, California 92101. On August 26, 2014, I served
6 the within documents:

7 **DEFENDANTS' JOINT OPPOSITION AND STATEMENT OF**
8 **POSITION IN RESPONSE TO PLAINTIFFS' MOTION FOR**
9 **CLARIFICATION AND MODIFICATION OF DISCOVERY DISPUTE**
10 **PROTOCOL**



12 I hereby certify that on the below date, I electronically filed the
13 foregoing with the Clerk of the Court using the CM/ECF system
14 which will send notification of such filing to the e-mail
15 addresses denoted on the Electronic Mail notice list, and I
16 hereby certify that I have mailed the foregoing document or
17 paper via the United States Postal Service to the non-CM/ECF
18 participants indicated on the Manual Notice list (if any).

19 I declare that I am employed in the office of a member of the bar of this court
20 at whose direction the service was made.

21 Executed on August 26, 2014, at San Diego, California.

22 By: 

23 Erin Domingo